



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

MEMORANDUM

DAVID P. LITTELL  
COMMISSIONER

To: Board of Environmental Protection

FROM: Jeff Madore, George Seel, Bureau of Remediation and Waste Management

DATE: October 15, 2009

RE: Provisional Adoption of Chapter 700 Wellhead Protection: Siting Facilities that Pose a Significant Threat to Drinking Water

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Statutory and Regulatory References:

- 38 MRSA chapter 13-D (§§ 1391-1399) [re: wellhead protection];
- 38 MRSA §341-D(1-B) [authorizing the board to adopt, amend or repeal reasonable rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering];
- PL 2007, chapter 569, section 7 [directing the Board of Environmental Protection to adopt rules that restrict the siting of facilities listed in 38 MRSA § 1393(1) within significant sand and gravel aquifers mapped by the Maine Geological Survey].

Scope:

Chapter 700 applies to the siting of certain designated facilities that pose a significant threat to drinking water in wellhead protection zones and within certain ground water aquifers as defined in the rule. These facilities include: automobile graveyards; automobile body shops or other commercial automobile maintenance and repair facilities; dry cleaning facilities that use perchloroethylene; metal finishing or plating facilities; and commercial hazardous waste facilities.

Description:

P. L. 2007, Chapter 569, amended Title 38 to establish a restriction on the siting of oil storage facilities, as well as other designated facilities, in wellhead protection zones and within aquifers mapped by the Maine Geological Survey. The department chose to pursue two rulemakings, Chapter 700 addressing facilities that pose a significant threat to drinking water and Chapter 692 addressing oil storage facilities.

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Chapter 700 closely mirrors the legislation and includes provisions for variances from the siting restrictions. The rule establishes provisions for variances in a number of instances:

- 1) When it has been demonstrated that there is no hydrological connection between the facility and the water supply at issue;
- 2) When it has been affirmatively demonstrated that the aquifer has been incorrectly mapped;
- 3) When it has been affirmatively demonstrated that the aquifer has a potentially low use or is polluted; or
- 4) When an applicant has demonstrated that the facility will be designed and installed to further reduce the risk of discharges of oil and the likelihood of future ground water contamination.

The rule does not provide for a variance within high potential aquifers as identified in the rule.

The rule includes specific engineering, siting and monitoring criteria to ensure that the intent of the enabling legislation is met.

That portion of the rule addressing the siting of designated facilities in wellhead protection zones is eligible for adoption pursuant to the department's discretionary rulemaking authority as routine technical. That portion of the rule addressing the siting of designated facilities within significant sand and gravel aquifers mapped by the Maine Geological Survey is required by section 7 of P. L. 2007, Chapter 569, to be adopted as major substantive. For the sake of expediency and to avoid confusion, the department has chosen to follow the major substantive rulemaking procedures for the entire chapter.

The Board held a public hearing on the rule in Augusta on August 8, 2009. Only one comment was received at the public hearing and one letter received during the comment period from a representative of Dead River Company. The comment received at the public hearing was from a representative of the Maine Automobile Recyclers Association asking how the rule affected the expansion of existing automobile recyclers. The question was answered at the hearing by the department. The expansion of an existing facility is exempt provided the facility was in existence on Sept. 30, 2008, the expansion or replacement occurs on the same property and the facility meets all applicable requirements of law. The comments received from Dead River Company centered on: 1) the applicability of the rule to fleet garages maintained by commercial businesses; 2) whether the ownership of non contiguous parcels of land should be considered by the department in granting a variance for facilities proposed in wellhead protection zones; and 3) whether variances should be allowed to be considered in high potential aquifers. Attached to the rule proposed for adoption is the Basis Statement which details the specific comment received into the public record and the Department's responses. Copies of the comments have been provided to you under separate cover.

Attached is an underline/strikeout version of the rule incorporating a number of changes in response to the comments received. These changes include:

- Eliminating “owner” and replacing the term owner with the term “applicant” as it applies to application requirements throughout the rule. Section 5 requires that an application meet the requirements of Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(11) that sets forth the requirements for title, right or interest, including but not limited to ownership, an option to buy or a leasing agreement.
- Eliminating the language in Section 3(A)(4) after the word “premises” as the language is redundant.
- Adding the qualifying language “Notwithstanding Section 4(B), at the beginning of the first sentence in the first paragraph in Section 4(E). This would clarify that an applicant cannot apply for a variance within high potential aquifers as defined.

Environmental Issues:

The requirements of the rule support the implementation of Maine’s new wellhead protection law, Wellhead Protection, 38 MRSA §§1391-1399. The purpose of the law as stated in section 1391 is “to protect the health, safety and welfare of Maine’s citizens by establishing a coordinated statewide program to protect drinking water wells from contamination by oil or hazardous substances.” The law accomplishes this purpose mainly by restricting the siting of oil storage facilities and facilities that pose a significant threat to drinking water and an unacceptable risk to groundwater quality and therefore should be kept away, if at all possible, from drinking water supplies, including sand and gravel aquifers mapped by the Maine Geological Survey. These aquifers are the most cost effective potential future public water sources for Maine communities fortunate enough to have them but they are particularly vulnerable to contamination because of their inherent permeability.

Department Recommendation: The Department recommends that the Board provisionally adopt Chapter 700.

Estimated Time of Presentation: 45 minutes.